

AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN ASSEMBLY MARCH 21, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1838

Introduced by Assembly Member Charles Calderon

February 22, 2012

An act to amend Sections 1368 and 1368.2 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1838, as amended, Charles Calderon. Common interest developments: association records.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments, which include community apartment projects, condominium projects, planned developments, and stock cooperatives. Existing law specifies certain documents that an association must provide to a prospective purchaser before transfer of title to the separate interest or execution of a real property sales contract, as defined. Existing law also specifies certain documents that an association must provide to a prospective purchaser upon request. Existing law prohibits an association from charging certain assessments, penalties, or fees in connection with a transfer of title or any other interest, unless an exception applies. Among these exceptions, existing law authorizes an association to collect an amount not to exceed the association's actual cost to change its records. Existing law requires the association to also provide a specified form that contains an estimate of the costs associated with providing the prospective purchaser with the requested documents.

This bill would ~~apply all the requirements and prohibitions described above to an authorized representative of an association. The bill would also authorize an assessment, penalty, or fee for an amount not to exceed the fees charged by an authorized representative of an association to change the records of the association~~ *further prohibit a cancellation fee for the documents described above if the cancellation was requested in writing by the same person who placed the order and if work on the order had not yet been performed or if the work had been compensated. The bill would require that any fees charged for the documents described above also be evidenced on the form described above.* The bill would *revise the form to indicate who provided the documents, as well as to include categories for documents not provided and for documents provided directly by the seller, as specified.* The bill would also require that the ~~financial disclosure form described above~~ be written in at least 10-point type.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1368 of the Civil Code is amended to
- 2 read:
- 3 1368. (a) The owner of a separate interest, other than an owner
- 4 subject to the requirements of Section 11018.6 of the Business and
- 5 Professions Code, shall ~~obtain from the association or authorized~~
- 6 ~~representative of the association~~ *procure and prepare*, as soon as
- 7 practicable before transfer of title to the separate interest or
- 8 execution of a real property sales contract therefor, as defined in
- 9 Section 2985, and ~~provide~~ *disclose* to the prospective purchaser
- 10 all of the following:
- 11 (1) A copy of the governing documents of the common interest
- 12 development, including any operating rules, and including a copy
- 13 of the association's articles of incorporation, or, if not incorporated,
- 14 a statement in writing from an authorized representative of the
- 15 association that the association is not incorporated.
- 16 (2) If there is a restriction in the governing documents limiting
- 17 the occupancy, residency, or use of a separate interest on the basis
- 18 of age in a manner different from that provided in Section 51.3, a
- 19 statement that the restriction is only enforceable to the extent

1 permitted by Section 51.3 and a statement specifying the applicable
2 provisions of Section 51.3.

3 (3) A copy of the most recent documents distributed pursuant
4 to Section 1365.

5 (4) A true statement in writing as to the amount of the
6 association's current regular and special assessments and fees, any
7 assessments levied upon the owner's interest in the common
8 interest development that are unpaid on the date of the statement,
9 and any monetary fines or penalties levied upon the owner's
10 interest and unpaid on the date of the statement. The statement
11 shall also include true information on late charges, interest, and
12 costs of collection which, as of the date of the statement, are or
13 may be made a lien upon the owner's interest in a common interest
14 development pursuant to Section 1367 or 1367.1.

15 (5) A copy or a summary of any notice previously sent to the
16 owner pursuant to subdivision (h) of Section 1363 that sets forth
17 any alleged violation of the governing documents that remains
18 unresolved at the time of the request. The notice shall not be
19 deemed a waiver of the association's right to enforce the governing
20 documents against the owner or the prospective purchaser of the
21 separate interest with respect to any violation. This paragraph shall
22 not be construed to require an association to inspect an owner's
23 separate interest.

24 (6) A copy of the initial list of defects provided to each member
25 of the association pursuant to Section 1375, unless the association
26 and the builder subsequently enter into a settlement agreement or
27 otherwise resolve the matter and the association complies with
28 Section 1375.1. Disclosure of the initial list of defects pursuant to
29 this paragraph does not waive any privilege attached to the
30 document. The initial list of defects shall also include a statement
31 that a final determination as to whether the list of defects is accurate
32 and complete has not been made.

33 (7) A copy of the latest information provided for in Section
34 1375.1.

35 (8) Any change in the association's current regular and special
36 assessments and fees which have been approved by the
37 association's board of directors, but have not become due and
38 payable as of the date disclosure is provided pursuant to this
39 subdivision.

1 (9) If there is a provision in the governing documents that
2 prohibits the rental or leasing of any of the separate interests in
3 the common interest development to a renter, lessee, or tenant, a
4 statement describing the prohibition and its applicability.

5 (10) If requested by the prospective purchaser, a copy of the
6 minutes of the meetings, excluding meetings held in executive
7 session, of the association's board of directors, conducted over the
8 previous 12 months, that were approved by the association's board
9 of directors.

10 (b) (1) Upon written request, the association ~~or authorized~~
11 ~~representative of the association~~ shall, within 10 days of the mailing
12 or delivery of the request, provide the owner of a separate interest,
13 or any other recipient authorized by the owner, with a copy of the
14 requested documents specified in paragraphs (1) to (10), inclusive,
15 of subdivision (a). Upon receipt of a written request, the association
16 ~~or authorized representative of the association~~ shall ~~provide~~
17 *disclose*, on the form described in Section 1368.2, a written or
18 electronic estimate of the fees that will be ~~assessed~~ *charged* for
19 providing the requested documents. The documents required to be
20 made available pursuant to this section may be maintained in
21 electronic form, and may be posted on the association's Internet
22 Web site. Requesting parties shall have the option of receiving the
23 documents by electronic transmission if the association maintains
24 the documents in electronic form. The association may collect a
25 reasonable fee based upon the association's actual cost for the
26 procurement, preparation, reproduction, and delivery of the
27 documents requested pursuant to the provisions of this section.

28 (2) No additional fees may be charged by the association ~~or~~
29 ~~authorized representative of the association~~ for the electronic
30 delivery of the documents requested.

31 (3) *A cancellation fee for documents specified in subdivision*
32 *(a) shall not be collected if either of the following applies:*

33 (A) *The request was canceled in writing by the same party that*
34 *placed the order and work had not yet been performed on the*
35 *order.*

36 (B) *The request was canceled in writing and any work that had*
37 *been performed on the order was compensated.*

38 ~~(3)~~

39 (4) *Fees charged for any documents required by this section*
40 *shall be evidenced on the form described in Section 1368.2 and*

1 shall be distinguished from other fees, fines, or assessments billed
2 as part of the transfer or sales transaction. Delivery of the
3 documents required by this section shall not be withheld for any
4 reason nor subject to any condition except the payment of the fee
5 allowed pursuant to paragraph (1).

6 ~~(4)~~

7 (5) An association may contract with any person or entity to
8 facilitate ~~compliance with the requirements of this subdivision on~~
9 ~~behalf of the association~~ *the requirements of this section and any*
10 *other tasks associated with the transfer of title.*

11 ~~(5)~~

12 (6) The association ~~or authorized representative of the~~
13 ~~association~~ shall also ~~provide~~ *deliver to* a recipient authorized by
14 the owner of a separate interest ~~with~~ a copy of the completed form
15 specified in Section 1368.2 at the time the required documents are
16 delivered.

17 (c) (1) Except as provided in paragraph (2), neither an
18 association nor a community service organization or similar entity
19 may impose or collect any assessment, penalty, or fee in connection
20 with a transfer of title or any other interest except for the following:

21 (A) An amount not to exceed the association's actual costs to
22 change its records ~~or the fees charged by the authorized~~
23 ~~representative of the association to change the records of the~~
24 ~~association.~~

25 (B) An amount authorized by subdivision (b).

26 (2) The prohibition in paragraph (1) does not apply to a
27 community service organization or similar entity, or to a nonprofit
28 entity that provides services to a common interest development
29 under a declaration of trust, that is described in subparagraph (A)
30 or (B):

31 (A) The community service organization or similar entity
32 satisfies both of the following requirements:

33 (i) The community service organization or similar entity was
34 established prior to February 20, 2003.

35 (ii) The community service organization or similar entity exists
36 and operates, in whole or in part, to fund or perform environmental
37 mitigation or to restore or maintain wetlands or native habitat, as
38 required by the state or local government as an express written
39 condition of development.

1 (B) The community service organization or similar entity, or a
2 nonprofit entity that provides services to a common interest
3 development under a declaration of trust, satisfies all of the
4 following requirements:

5 (i) The organization or entity is not an organization or entity
6 described in subparagraph (A).

7 (ii) The organization or entity was established and received a
8 transfer fee prior to January 1, 2004.

9 (iii) On and after January 1, 2006, the organization or entity
10 offers a purchaser the following payment options for the fee or
11 charge it collects at time of transfer:

12 (I) Paying the fee or charge at the time of transfer.

13 (II) Paying the fee or charge pursuant to an installment payment
14 plan for a period of not less than seven years. If the purchaser
15 elects to pay the fee or charge in installment payments, the
16 organization or entity may also collect additional amounts that do
17 not exceed the actual costs for billing and financing on the amount
18 owed. If the purchaser sells the separate interest before the end of
19 the installment payment plan period, he or she shall pay the
20 remaining balance prior to transfer.

21 (3) For the purposes of this subdivision, a “community service
22 organization or similar entity” means a nonprofit entity, other than
23 an association, that is organized to provide services to residents
24 of the common interest development or to the public in addition
25 to the residents, to the extent community common areas or facilities
26 are available to the public. A “community service organization or
27 similar entity” does not include an entity that has been organized
28 solely to raise moneys and contribute to other nonprofit
29 organizations that are qualified as tax exempt under Section
30 501(c)(3) of the Internal Revenue Code and that provide housing
31 or housing assistance.

32 (d) Any person or entity who willfully violates this section is
33 liable to the purchaser of a separate interest that is subject to this
34 section for actual damages occasioned thereby and, in addition,
35 shall pay a civil penalty in an amount not to exceed five hundred
36 dollars (\$500). In an action to enforce this liability, the prevailing
37 party shall be awarded reasonable attorneys’ fees.

38 (e) Nothing in this section affects the validity of title to real
39 property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

(g) For the purposes of this section, a person who acts as a community association manager is an agent, as defined in Section 2297, of the association.

SEC. 2. Section 1368.2 of the Civil Code is amended to read:
1368.2. The form for billing disclosures required by Section 1368 shall be in substantially the following form and in at least 10-point type:

CHARGES FOR *ALL OF THE* DOCUMENTS PROVIDED AS REQUIRED
BY SECTION 1368*

Property Address _____
Owner of Property _____
Owner's Mailing Address _____
(If known or different from property address.)

Provider of the Section 1368 Items: *(check the one that applies)*
____ *Seller* ____ *Association* ____ *Authorized Representative of the Association*

Print Name	Position or Title	Association or Agent	Date Form Completed
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Check or Complete Applicable Column or Columns Below

Document	Civil Code Section	Included	Not Available (N/A) or Not Applicable (N/App) or Not Provided (NP) or Directly provided by Seller and confirmed in writing by Seller as a current document (DP)
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1	Articles of Incorporation or	Section 1368(a)(1)	_____	_____
2	statement that not			
3	incorporated			
4	CC&Rs	Section 1368(a)(1)	_____	_____
5	Bylaws	Section 1368(a)(1)	_____	_____
6	Operating Rules	Section 1368(a)(1)	_____	_____
7	Age restrictions, if any	Section 1368(a)(2)	_____	_____
8	Pro forma operating budget	Sections 1365 and	_____	_____
9	or summary, including	1368(a)(3)		
10	reserve study			
11	Assessment and reserve	Sections 1365 and	_____	_____
12	funding disclosure summary	1368(a)(4)		
13	Financial statement review	Sections 1365 and	_____	_____
14		1368(a)(3)		
15	Assessment enforcement	Sections 1365 and	_____	_____
16	policy	1368(a)(4)		
17	Insurance summary	Sections 1365 and	_____	_____
18		1368(a)(3)		
19	Regular assessment	Section 1368(a)(4)	_____	_____
20	Special assessment	Section 1368(a)(4)	_____	_____
21	Emergency assessment	Section 1368(a)(4)	_____	_____
22	Other unpaid obligations of	Sections 1367.1	_____	_____
23	seller	and 1368(a)(4)		
24	Approved changes to	Sections 1365 and	_____	_____
25	assessments	1368(a)(4), (8)		
26	Settlement notice regarding	Sections	_____	_____
27	common area defects	1368(a)(6), (7) and		
28		1375.1		
29	Preliminary list of defects	Sections	_____	_____
30		1368(a)(6), 1375,		
31		and 1375.1		
32	Notice(s) of violation	Sections 1363 and	_____	_____
33		1368(a)(5)		
34				
35				
36	Required statement of fees	Section 1368	_____	_____
37	Minutes of regular meetings	Section 1368(a)(9)	_____	_____
38	of the board of directors			
39	conducted over the previous			
40	12 months, if requested			

1 Total fees for *all of* these _____
2 documents:
3 * The information provided by this form may not include all fees that may be
4 imposed before the close of escrow. Additional fees that are not related to the
5 requirements of Section 1368 may be charged separately.
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O